IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH JANUARY 2007 / 15TH POUSHA 1928

Crl.MC.No. 47 of 2007()

CC.180/1993 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHENGANNUR

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PETITIONER:

RADHAKRISHNAN NAIR,
S/O.SREEDHARAN NAIR, SHYAMALALAYAM,
KUTTOOR P.O., THALAYAR, THIRUVALLA.

BY ADV. SRI.SAJITH KUMAR V.

RESPONDENT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.47 of 2007

Dated this the 5th day of January, 2007

ORDER

The petitioner is the 2nd accused in a prosecution, inter alia, under Section 452 and 326 read with 149 I.P.C. The petitioner was not available for trial. There was a case and a counter case. Parties appear to have settled the dispute. The co-accused have already been tried and acquitted. The petitioner who was employed abroad could not appear before the learned Magistrate. The petitioner has now come to know of the pendency of the split up case against him.

2. The learned counsel for the petitioner submits that in view of the judgment of acquittal of the co-accused as per the judgment, a copy of which is produced as Annexure-A1, the proceedings against him also may be quashed. It is submitted that in that prosecution, all relevant witnesses have turned hostile to the prosecution and no incriminating evidence was tendered before the learned Magistrate in such prosecution against any accused.

3. It is now trite and the decision in **Moosa v. Sub Inspector of Police** [2006(1) KLT 552] by the Full Bench makes the position crystal clear that the hostility of the witnesses in the trial against the co-accused is by itself not a satisfactory or sufficient reason to persuade the Court to invoke the powers under Section 482

Cr.P.C. In fact, to a pointed query by this Court, it is conceded that as the petitioner has been named as an accused in the F.I.R. The powers under Section 482 Cr.P.C cannot obviously be invoked to concede any premium to persons who perjure before court or in favour of the accused persons who ensure such perjury. I am, in these circumstances, satisfied that this is certainly not a fit case where the extraordinary inherent jurisdiction available under Section 482 Cr.P.C can or ought to be invoked. Such jurisdiction is to be invoked sparingly and in exceptional cases in aid of justice.

4. The learned counsel for the petitioner alternatively contends that he will be in a position to satisfy the learned Magistrate that no non compoundable offence is committed and that all the compoundable offences allegedly committed have already been compounded. Of course, it will be open to the petitioner to appear before the learned Magistrate and contend at the stage of Section 239/240 Cr.P.C that charges need be framed only for compoundable offences. Such contention must certainly be considered by the learned Magistrate on merits.

5. Finally the learned counsel for the petitioner submits that a direction may be issued under Section 482 Cr.P.C to the learned Magistrate to release the petitioner on bail when he appears before the learned Magistrate and applies for bail. It is for the petitioner to

appear before the learned Magistrate and to explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This Crl.M.C is, in these circumstances, dismissed. But with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

rtr/-